	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62	
	A. File No.	: F.NO.VIII/48-17/Adj/Pr.Commr./MCH/2017-18
B. Order-in- Original No.	: MUN-CUSTM-000-COM-16-17-18	
C. Passed by	: <b>Shri Sanjay Kumar Agarwal</b> Commissioner of Customs, Custom House, AP & SEZ, Mundra.	
D. Date of order Date of issue	: 12.02.2018 12.02.2018	
E. SCN No. & Date	: S/15-01/Enq/SIIB//CHM//17-18 dated 13.10.2017	
F. Noticee(s)/Party/ Exporter	: M/s Diamond Creations, 112, 1 <sup>st</sup> Floor, Eight Marla, Model Town, Sonipat – 131 001, Haryana and others	

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1) के अंतर्गत प्रपत्र सीए- 3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-  
Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:  
"केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवा कर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ,  
2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्रीमिल कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद 380004"  
**"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,  
2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge,  
Girdhanagar PO, Ahmedabad 380 004."**
- उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within three months from the date of communication of this order.
- उक्त अपील के साथ 1000/-रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो, 5000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो, 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बैंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।  
Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
- उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मद सं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प बहन करना चाहिए।  
The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।  
Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
- अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम,1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।  
While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.
- इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।  
An appeal against this order shall lie before the Tribunal on payment of 7.5 % of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Sub: SCN F.No. S/15-01/Enq/SIIB//CHM//17-18 dated 13.10.2017 issued M/s Diamond Creations, 112, 1<sup>st</sup> Floor, Eight Marla, Model Town, Sonipat – 131 001, Haryana and others.



**Brief facts of the case:**

An intelligence gathered by DRI, Ahmedabad indicated that some of the importers at Mundra Customs were importing goods namely “**Polyester Woven Fabrics**” (classifiable under CTH-5407) by mis-declaring the same as “**100% Polyester Bed Cover**” and classifying the same under CTH-6304 of the Customs tariff Act, 1985, thereby evading payment of higher Customs duty leviable thereon. Polyester woven fabrics falling under chapter 5407 attracts Basic Customs Duty @ 10 % advalorem or Rs 11/- to 87/- per Sq. mtrs. or Rs. 115 to Rs 150/- per Kg whichever is higher, whereas the “Polyester Bed Cover” falling under Chapter 6304 attracts basic Customs duty @ 10% advalorem. Intelligence further suggested that M/s Diamond Creations, 112, 1<sup>st</sup> Floor, Eight Marla, Model Town, Sonipat – 131 001, Haryana had filed one Bill of Entry through their Custom Broker namely M/s Bright Shiptrans P Ltd., as detailed below:

Sr no	Bill of Entry No. and Date	Description of the Goods as Declared by the Importer	Assessable Value (INR)	No. of Pieces
1	8523067 dated 13.02.2017	100% Polyester Bed Cover (Bulk packing) (Size 225 X 225 cm) (20010 pcs / 290 bales/25710Kgs net)	29,02,979/-	20010

2. The above consignment was examined by officers of SIIB, Customs House, Mundra based on the above intelligence vide panchnama dated 20.04.2017. During the course of the examination, it was found that there were 290 packages (69 pieces per package) of rectangular shape of printed fabrics, folded and loosely stitched from two sides. The measurement of the textile material of the goods was 225 cm X 225 cm.

3. Further, the representative samples were drawn from the said consignment and forwarded to the Textiles Committee, Mumbai vide letter F.No. IMP/MP&SEZ/HIND TERMINAL MUNDRA CFS/1939/2016-17 dated 28.02.2017 for ascertaining whether the said samples fall under the category of “made-ups” as defined under HSN (Harmonized System of Nomenclature).

3.1 Test Report No. 0153051617-9266 dated 21.03.2017 of Textiles Committee, Mumbai which was submitted by the Customs Broker at Mundra Custom House, wherein the Textiles Committee, Mumbai has opined with regard to sample forwarded is as under:-

Test Report No:0153051617-9266	Date : 21 Mar 2017	
Name & Address of Customer	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: Custom House M.P. & S.E.Z. Mundra (Kutch) - 370421	
Sample forwarding letter No. & date:	F.No IMP/MP&SEZ/HIND TERMINAL MUNDRA CFS/1939/16-17 dated 28.02.2017	
Date of receipt of sample	06-Mar-2017	
Buyers Name & address (Optional):	Diamond Creations	
Customer Sample No.	BE No.8523067/13.02.2017	Lab Sample No.
Sample Description:	100% Polyester Bed Cover/Quilt	0153051617-9266



	Cover	
Sample Characteristics:	Fabric	
Date of Performance of Tests:	06 Mar 2017 - 21 Mar 2017	
<b>TEST RESULTS</b>		
Sample Mark		
Laboratory Sample No.		0153051617-9266
1	Identification of fibre (IS 667:1981)	
	Warp & Weft	Polyester
2	Fibre Blend Composition (%)..	
	Polyester	100
3	Weight of Sample (TC/Lab TM-03)	
	Weight per Square meter (g)	124.6
4	Whether Texturised/Non texturised yarn (In house)	
	Warp	Texturised Yarn
	Weft	Cannot be ascertained as the yarn is found to be ruptured.
	Percentage of Texturised/ Non Texturised yarn	
	Texturised yarn	48.1
	Cannot be ascertained	51.9
5	Whether Woven/Knitted/Non woven	Woven
6	Whether Unbleached/Bleached/Dyed/Printed/Yarns of Different Colour (in house)	Printed
7	H S Code	
	<b>Whether sample fall under the category of "madeups" as defined under the HSN</b>	<b>Sample is classified as "madeups" but can be appropriately classified as "Polyester woven fabric"</b>
	<b>Correct description &amp; classification of the sample</b>	<b>Sample is classified as "Polyester woven printed quilt case" under H.S. code 6302.22</b>

3.2 However, on doubting the genuineness of the above test report submitted by the Customs Broker at Mundra Custom House, a copy of office copy retained by the Textiles Committee, Mumbai of the Test Report 0153051617-9266 dated 21.03.2017 of the Textiles Committee, Mumbai, was obtained by the officer of the Special Investigation and Intelligence Branch (SIIB), Custom House, Mundra in person from the Textiles Committee, Mumbai, with regard to the same sample forwarded to Textiles Committee, Mumbai, which revealed different results/remarks than as shown above.

3.3 Accordingly, having two different result of the same sample, in order to ascertain the genuineness/veracity of the Test Report of Textiles Committee, Mumbai, the Special Investigation and Intelligence Branch (SIIB) of Custom House, Mundra vide letter F.No. S/15-126/Enq/CHM/16-17 dated 31.03.2017 has sought clarification regarding the discrepancies. The Textiles Committee, Mumbai vide their letter Ref. No. TC/Customs/Testing/2016-17 dated 06.04.2017 has further provided an attested copy of original Test Report 0153051617-9266 dated 21.03.2017 and **they have opined that genuine test reports issued by them have been replaced with fake reports.** The original/correct/actual Test Report opined as under:



Test Report No:0153051617-9266		Date : 21 Mar 2017	
Name & Address of Customer		OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:	Sample Swatch
		Custom House	
		M.P. & S.E.Z. Mundra (Kutch) - 370421	
Sample forwarding letter No. & date:		F.No IMP/MP&SEZ/HIND TERMINAL MUNDRA CFS/1939/16-17 dated 28.02.2017	
Date of receipt of sample		06-Mar-2017	
Buyers Name & address (Optional):		Diamond Creations	
Customer Sample No.		BE No.8523067/13.02.2017	Lab Sample No.
Sample Description:		100% Polyester Bed Cover/Quilt Cover	0153051617-9266
Sample Characteristics:		Fabric	
Date of Performance of Tests:		06 Mar 2017 - 21 Mar 2017	
TEST RESULTS			
Sample Mark			
Laboratory Sample No.		0153051617-9266	
1	Identification of fibre (IS 667:1981)		
	Warp & Weft	Polyester	
2	Fibre Blend Composition (%)..		
	Polyester	100	
3	Weight of Sample (TC/Lab TM-03)		
	Weight per Square meter (g)	124.6	
4	Whether Texturised/Non texturised yarn (In house)		
	Warp	Texturised Yarn	
	Weft	Cannot be ascertained as the yarn is found to be ruptured.	
	Percentage of Texturised/ NonTexturised yarn		
	Texturised yarn	48.1	
	Cannot be ascertained	51.9	
5	Whether Woven/Knitted/Non woven	Woven	
6	Whether Unbleached/Bleached/Dyed/ Printed/Yarns of Different Colour (in house)	Printed	
7	H S Code		
	<b>Whether sample fall under the category of "madeups" as defined under the HSN</b>	<b>Sample cannot be classified as "madeups" but can be appropriately classified as "Polyester woven fabric".</b>	
	<b>Correct description &amp; classification of the sample</b>	<b>Could not ascertain whether the weft is filament yarn or staple spun yarn. Hence, appropriate H.S. code is not provided</b>	

3.4 On scrutiny of both the reports, there are material difference of opinion at Sr. No. 7 given and the same is reproduced for the sake of ease as under:-

Query	Fake Report	Original Report
<b>Whether sample fall under the category of "madeups" as defined under the HSN</b>	Sample is classified as "madeups" but can be appropriately classified as "Polyester woven fabric".	Sample cannot be classified as "madeups" but can be appropriately classified as "Polyester woven fabric".
<b>Correct description &amp; classification of the</b>	Sample is classified as "Polyester woven printed	Could not ascertain whether the weft is filament yarn or staple spun yarn.



sample	quilt case" under H.S. code 6302.22	Hence, appropriate H.S. code is not provided
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3.5 The fake report justifies the mis-declaration of the goods i.e. confirms that the goods imported are 100% Polyester Bed/Quilt Cover, however the original report reveals that the goods are 100% Polyester Woven Fabrics.

3.6 Further, due to rupture of the yarn during the testing, some of the parameters like filament yarn/staple spun yarn and actual composition of the texturized/non- texturized yarn are not forth coming, hence, vide letter F.No S/15-01/Enq/CHM/17-18 dated 26.04.2017 sample was drawn from the said consignment and forwarded to Ahmedabad Textile Industry's Research Association (ATIRA) for ascertaining the nature and composition of the goods. Accordingly, the test report reference no. CTD/50/ dated 28.04.2017 was received from Ahmedabad Textile Industry's Research Association (ATIRA), Ahmedabad and opined that as under:-

**Test report**

- *The fabric contains 100% polyester.*
- *The fabric is woven and printed.*
- *The fabric contains all texturised filament yarns in warp and weft. The filaments of weft are getting broken due to peaching process given to the fabric.*
- *The fabric is woven and printed.*
- *As the fabric has been peach finished, the filament yarns are damaged. Hence, actual strength of warp and weft yarns used in making the fabric cannot be determined. Generally, high tenacity yarns are not used in home textiles. These are used in industrial fabrics.*

The said test report of ATIRA confirmed that the samples are of 100% polyester. The fabric is woven and printed. It contains all texturized filament yarns in both warp and weft. The filaments of weft are getting broken due to peaching process done on fabric.

4. Shri Pradeep Narang, authorized representative of M/s. Diamond Creations in his statement dated 12.04.2017 stated that he was looking after the work related to Import/export of M/s Diamond Creations; that he placed order for the goods through an agent Mr. Dipak based at China.

4.1 On being shown both the copies of TR No. 0153051617-9266 of Textile Committee, Mumbai he stated that under the sub-column one of the column 7 i.e. 'Whether sample fall under the category of "madeups" as defined under the HSN' is in one copy of TR No. 0153051617-9266 it is mentioned that 'Sample cannot be classified as "madeups" but can be appropriately classified as "Polyester woven fabric" and in another copy of TR No. 0153051617-9266 it is mentioned that "Sample is classified as "madeups" but can be appropriately classified as "Polyester woven fabrics". Similarly under the sub-column two of the column 7 i.e. Correct description and classification of the sample it is mentioned that "Could not ascertain whether the weft is filament yarn or staple spurn yarn. Hence, appropriate H.S. code is not provided" and in another copy of TR No. 0153051617-9266 it is mentioned as "Sample is classified as "Polyester woven printed quilt case" under H.S. code 6302.22". He agreed with the Test Report No. 0153051617-9266 dated 21.03.2017 issued by the Textiles Committee, Mumbai and also agreed



with the opinion of the Textiles Committee that the said goods are appropriately classifiable as "polyester woven fabrics". He also accepted that as per the Test Report when the goods are polyester woven fabric then the same cannot be considered as madeups and vice versa.

4.2 Further, Shri Pradeep Narang, authorized representative of the noticee i.e. M/s. Diamond Creations has admitted that they are ignorant about the testing procedures, as their post import and logistics are handled by their CHA/CB M/s Bright Shiptrans Pvt. Ltd.

5. On further investigation with regard to forgery/fake Test Report of the Textiles Committee, statement of Shri Mahesh Bhanushali, was recorded on 12.04.2017 under Section 108 of the Customs Act, 1962, wherein he has admitted that he has been engaged by Shri Amit Momaya, on the behest of Shri Bajrang Lal Sharma, Executive Director of M/s Bright Shiptrans Private Limited at Mumbai to modify the Test Result forwarded to Custom House, Mundra by forging/manipulating the same to suit their desired results.

5.1 Statement of Shri Amit Momaya, was recorded on 20.04.2017, wherein he has admitted that he has engaged Shri Mahesh Bhanushali to obtain positive test reports from the Textiles Committee, Mumbai to suit their desired results on behalf of Shri Bajrang Lal Sharma. He further stated that Shri Mahesh was regularly engaged to get the desired results and for that he has been paid some remuneration. However, Shri Amit Momaya has filed an affidavit dated 22.04.2017 wherein he has retracted the statement tendered by him on 20.04.2017.

5.2 Statement of Shri Bajrang Lal Sharma, Executive Director M/s Bright Shiptrans Pvt. Ltd. (CB), was recorded on 17.04.2017 & 21.04.2017, wherein he stated that he knows Mr. Amit Momaya, since last 5-6 years, they met through some common friends and also during the course of business, as they are doing / dealing in similar type of business i.e. work related to customs broker. All the samples collected by the staff of their company from Customs, Mundra are sent to Mr. Amit Momaya to get the testing report from Textile Committee lab. He also stated that on going through both the sets of Test Reports, it appears that the Test Reports received at this office is different in comparison to the Test Reports retrieved from Textiles Committee i.e. one set of the Test Report is forged/altered. He made a reference of an earlier report during the year 2014, issued by Textiles Committee, Mumbai, wherein similar commodity is tested and reported as "Polyester Woven printed quilt case" under H.S. 6302.22. He has requested Mr. Amit Momaya to obtain a favourable report on the lines of the above said report. Thus, it appears that he was involved in the forgery of test reports. From the investigation carried out so far it appeared that the evasion of customs duty is to the tune of Rs. 2 crore approx. It appeared that there was reason to believe that Shri Bajrang Lal Sharma has committed an offence punishable under Sections 132 and 135 of the Customs Act, 1962 by way of forging the test reports to evade the payment of Customs Duty, in regards to import of 100% Polyester Bed Cover and 100% Polyester Bed Cover/ Quilt Cover. Hence he was arrested by SIIB, Mundra Custom House on 21.04.2017 in exercise of the powers conferred under Section 104 of the Customs Act, 1962. The



Hon'ble High Court of Gujarat at Ahmedabad has allowed the regular bail of Shri Bajrang Lal Sharma vide order dated 23.05.2017.

5.3 In view of the above, it appeared that Shri Bajrang Lal Sharma, Shri Amit Momaya & Shri Mahesh Bhanushali have indulged in forgery of Test Reports received from Textiles Committee and are liable for penalty under Section 114AA of the Customs Act, 1962. Further, it appeared that they are also liable to penalty under Section 112(a)/114A of the Customs Act, 1962 for their omission and commission.

6. In view of the above, it appeared that Shri Pradeep Narang, the father of Shri Tushar Narang (Proprietor of M/s Diamond Creations) had knowingly concerned himself in the act of mis-declaration in the imports of polyester woven fabrics by mis-declaring the same as "Polyester Bed Cover". Shri Pradeep Narang had therefore knowingly and actively concerned himself in the act of mis-declaration and mis-classification before the Customs and thereby evading Customs Duty to the tune of Rs. 53,87,923/-. By his act of omission and commission on his part, he had rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962, in as much as he had concerned himself in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, and dealing in any other manner with such goods which he knew or had reasons to believe were liable to confiscation under Section 111(m) of the Customs Act, 1962.

6.1 In view of the above, the goods covered under Bill of Entry as per **Annexure "A"** to the SCN imported by M/s Diamond Creations by mis-declaring the same as "Polyester Bed Cover" totally valued at Rs. 29,02,979/- were placed under seizure under the provisions of the Customs Act, 1962 vide seizure memo dated 20.04.2017, under reasonable belief that the same were liable for confiscation under the Customs Act, 1962.

7. In view of the above, it appeared that M/s Diamond Creations had declared their goods as "Polyester Bed Cover" falling under chapter 63041930 attracting basic customs duty @ 10% Advalorem. As per Chapter Note 1 of Chapter 63 "Sub-chapter I applies only to "madeups articles, of any textile fabrics". Sub-chapter I covers goods falling under chapter heading 6301 to 6307 and madeups are defined under Note 7 of Section XI "Textile and Textile Articles". Plain reading of chapter note 1 of chapter 63 clearly implies that if the goods imported do not fall under the category of "madeups" they cannot be classified under chapter 63 of the Customs Tariff. In view of the opinion of the Textiles Committee and ATIRA, it appears that the said goods do not fall under the category of "madeups". The said goods appear to be mis-declared by M/s Diamond Creations as "Polyester Bed Cover" and do not fall under chapter 63041930 of the Customs Tariff, as declared by the importer.

7.1 It is an established fact that fabrics in running length (loosely & unevenly stitched) cannot be termed as bed covers / quilt covers. The cloth/fabric has to be hemmed and stitched firmly in order to assume the shape of a bed cover/quilt cover. Further the fourth side which is



open also has to be fitted with either buttons or zip in order to hold the bed/quilt. Accordingly, the goods that are being imported by declaring them as bed cover/ quilt cover are not in hemmed, stitched or fitted with buttons/ zip and as such cannot be sold in the market as bed cover / quilt cover. The facts that the goods imported by M/s Diamond Creations are loosely, unevenly, unsymmetrically stitched and also do not have any zip or button on the open side, hence, the goods appeared to be Polyester Woven Fabric but not the bed/quilt cover as declared by the importer.

8. The goods imported by M/s Diamond Creations as detailed in **Annexure "A"** to the SCN have been appropriately categorized and classified as "polyester woven fabric" by the Textiles committee and ATIRA, Ahmedabad. It appeared that the "polyester woven fabrics" fall under chapter 54 or 55 of the Customs Tariff depending on the type of yarn used in the weaving of such fabrics. The Test Results from Textiles Committee, Mumbai & ATIRA, Ahmedabad revealed that the samples are made up of 100% polyester, the fabric is woven and printed, it contains all texturized filament yarns in both warp and weft and the filaments of weft are getting broken due to peaching process done on fabric. In the report dated 28.04.2017, ATIRA also confirmed that:

*"As the fabric has been peach finished, the filament yarns are damaged. Hence actual strength of the warp and weft yarn used in making the fabric cannot be determined. Generally high tenacity yarns are not used in home textiles. These are used in Industrial fabrics".*

8.1 Chapter 5407 of the Customs Tariff deals with "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404" and Chapter 5512 to chapter 5516 of the Customs Tariff deals with "Woven fabrics of Synthetic Staple Fibre". In the instant case, the fabric is "made out of filament yarn, which is texturized". Hence the said fabrics appeared to be classifiable under chapter 5407 of the Customs Tariff.

8.2 Fabric made out of high tenacity yarns are mostly used for Industrial purpose and textile fabric in the instant case are mostly meant for the manufacture of textile articles used in household and not in Industries. Accordingly, the goods in the instant case cannot be classified under chapter 540710 of the Customs Tariff. Note 9 mentions "the woven fabrics of chapter 50 to 55 include fabrics consisting of layers of parallel textile yarns superimposed on each other at acute or right angles. These layers are bonded at the intersections of the yarns by an adhesive or by thermal bonding. Further these fabrics are not woven by strips and are not fabrics specified in Note 9 to Section XI, hence, they do not fall under chapter 540720 or 540730 of the Customs Tariff. The fabric is made up of 100% Polyester Filament Yarn but not of any Nylon or other Polyamides, hence, the CTH 540740 is also not applicable in the instant case.

8.3 Chapter 540750 covers "other woven fabrics, containing 85% or more by weight of textured polyester filaments;" In the instant case as evident from the test reports issued by ATIRA, Ahmedabad as discussed in the foregoing para, that the fabric is made entirely of



“texturized yarn” and hence it appeared that the same falls under the category of “fabrics with composition of texturized yarn more than 85% of the total weight”. Further these fabrics are printed in nature and are not “Terylene and Dacronsarees”, “polyester shirting”, “polyester saree” but fabrics used for making bed sheet/bed cover/quilt cover etc. It therefore appeared that the goods imported by M/s Diamond Creations under the Bill of Entry as detailed in Annexure “A” fall under chapter 5407 5490 under the head “printed – other fabrics” attracting duty @ 10% advalorem or Rs 20 per Sq. meter whichever is higher. Since the total value of the goods in the instant case is Rs. 29,02,979/-(as per Annexure “A”), Basic Customs duty @ 10% would come to Rs.2,90,298/-, whereas if calculated on Sq. Mtr basis, the same would be calculated as follows :

Total Sq. Meter(as per Annexure “A”to the SCN) = 202601.25Sq. Meter  
Basic Customs duty @ Rs 20 per Sq. Meter = Rs.202601.25 X 20 = Rs.40,52,025/-

8.4 On comparison of the two basic Customs duty i.e 10 % ad valorem and Rs 20 per Sq. Meter it is found that the amount calculated by applying the specific rate of duty @ Rs 20 per Sq. Meter is higher and the same is applicable in the instant case.

9. From the facts discussed in the foregoing paras and material evidences available on record, it appeared that M/s Diamond Creations had imported polyester woven fabrics from the overseas suppliers, and had resorted to mis-declaration, by declaring the description of the goods, which is other than the correct description of the goods, in the invoices and the documents filed before the Customs authority at the time of imports, with an intent to evade customs duty leviable thereon. The product (goods) declared by the importer before the Customs authority for clearance of the said imported consignments of “polyester woven fabrics” was not the correct description (as is evident from the opinion of the Textiles Committee, Mumbai & ATIRA, Ahmedabad), whereas it was declared as “Polyester Bed Cover”, before the customs at the time of Import. In the instant case, the importer had furnished wrong declaration, statement & documents to the Customs while filing of the bill of entry as detailed in Annexure “A” thereby suppressing the actual description of the goods imported by them, with an intention to evade Customs duty leviable thereon, by adopting the modus as detailed hereinabove. The fact of mis-declaration of the goods has been categorically admitted by Shri Pradeep Narang, authorized person of M/s Diamond Creations in his statement dated 12.04.2017 recorded under Section 108 of the Customs Act, 1962, which is duly corroborated with the documentary evidences discussed hereinabove. Thus, the declared description and classification in respect of the said imported consignments of “polyester woven fabrics”, mis-declared as “Polyester Bed Cover” by M/s Diamond Creations appeared to be liable reclassified under CTH 54075490.

10. From the above, it appeared that M/s Diamond Creations in connivance with the overseas supplier had willfully mis-stated the description of “polyester woven fabrics” before the Customs authority at the time of import with a view to evading higher applicable customs duty. The correct description and classification of the imported product was also suppressed at the time of filing of bill of entry by presenting an invoice with a different description of the goods. Thus,



it appeared that the applicable customs duty liability had not been discharged by the importer by way of willful mis-statement/ mis-declaration and suppression of facts and therefore, the customs duty is liable to be recovered under Section 28(4) of the Customs Act, 1962.

11. In view of the facts discussed in the foregoing paras and material evidences available on record and the deposition of Shri Pradeep Narang, representative of M/s Diamond Creations, it appeared that the importer has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they had intentionally mis-declared the description of their imported product as "Polyester Bed Cover" whereas the actual product was "polyester woven fabrics", thereby suppressing the correct description and classification of the imported goods, while filing the declaration, seeking clearance at the time of the importation of the impugned goods. This act on the part of importer had rendered the goods, as detailed in Annexure- "A" liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

12. It also appeared that the consignments of 20010 pcs of "polyester woven fabrics" totally admeasuring 202601.25 Sq. Meter totally valued at Rs.29,02,979/-, imported vide bill of entry as per Annexure "A" in the name of M/s Diamond Creations and subsequently placed under seizure vide seizure memo dated 20.04.2017, was imported by mis-declaring the same as "Polyester Bed Cover" and classifying the same under CTH 63041930 as against the actual description of the goods i.e "polyester woven fabrics" falling under CTH 54075490. It appeared that Shri Pradeep Narang, representative of M/s Diamond Creations had deliberately mis-declared the goods by willful mis-statement and suppression of the facts in contravention of various provisions of the Customs Act, 1962 and Rules made thereunder as discussed above with an intent to evade payment of higher Customs duty leviable thereon. The total customs duty leviable on the said goods amount to Rs. 53,87,923/-needs to be demanded and recovered from the importer under Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. However the importer has paid an amount of Rs.8,54,666/- at the time of assessment of goods in respect of Bill of entry which is required to be appropriated towards duty demanded. Therefore, the Customs duty not paid/ short paid amounting to Rs. 53,87,923/- as indicated in the Annexure – A, payable on the seized goods is liable to be recovered from M/s Diamond Creations under Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The said acts of omission and commission on the part of the importer have rendered themselves liable for penal action under the provisions of Section 114A/112(a) of the Customs Act, 1962. The said seized goods as detailed in Annexure-A also appear liable for confiscation under Section 111(m) of the Customs Act, 1962.

13. Shri Pradeep Narang, representative of M/s Diamond Creations, was looking after import/export of the firm and also interacting with the overseas suppliers for import of these goods. Being concerned with imports and their documentation, it appeared that he was responsible for the said mis-declaration of imported goods viz. "polyester woven fabrics" as "Polyester Bed Cover", in order to evade higher Customs duty leviable on the imports of "polyester woven fabrics". As accepted by him in his statement dated 12.04.2017, he used to



look after the said imports, and that the product imported by them does not fall under “madeups” and that the same was imported by him by declaring it as ‘Polyester Bed Cover’. He also accepted that the same is ‘polyester woven fabrics’ and correctly classifiable under chapter 5407, instead of chapter 63 of the CTH. It appeared that the said mis-declaration of the description of the goods in their import documents had been done by Shri Pradeep Narang. The aforesaid acts of willful mis-statement and mis-declaration of the description of the goods by M/s Diamond Creations, with a view to evade higher Customs duty leviable thereon, as detailed in Annexure A to the SCN, have made the subject goods liable for confiscation under Section 111 (m) of the Customs Act, 1962. For the above mentioned acts of omission and commission on the part of Shri Pradeep Narang, he has rendered himself liable for penal action under the provisions of Section 112 (a) of the Customs Act, 1962. Shri Pradeep Narang had knowingly and intentionally made, signed and fabricated documents as discussed in detail hereinabove, which were presented to the Customs authorities which he knew were false and incorrect in respect of the description of the imported goods. Hence the said act on the part of Shri Pradeep Narang has rendered him liable for penalty under Section 114AA of the Customs Act, 1962. Further, M/s Diamond Creation being a proprietary concern of Shri Tushar Narang separate penalty is also proposed on M/s Diamond Creations (Proprietor Shri Tushar Narang) under the provisions of Section 114A / 112(a) of the Customs Act, 1962.

14. During investigation, M/s Diamond Creations vide letter dated 17.04.2017 has requested re-export of the cargo imported by them vide the said Bill of Entry No.8523067 dated 13.02.2017. Importer’s request for re-export was considered by the then Principal Commissioner, Custom House, Mundra on the following conditions:

- (i) To take Bond for the full value of the goods and keep the duty paid as deposit for possible fine and penalty on adjudication;
- (ii) No refund of duty shall be granted till adjudication of the case.

14.1. Subsequently, M/s Diamond Creation has re-exported the imported cargo under reference to M/s. Connexion Plus General Trading LLC UAE vide Shipping Bill No. 6409306 dated 30.05.2017 Let export order thereof was granted on 05.06.2017. Accordingly, the Bill of Entry has been assessed provisionally pending investigation for re-export on the above conditions. M/s Diamond Creations have paid a total duty amount of Rs.8,54,666/- at the time of assessment of the goods in respect of bill of entry as per Annexure “A” to the SCN.

15. Based on the above findings, M/s Diamond Creations, Sonipat was called upon to show cause under F.No. S/15-01/Enq/SIIB/CHM/17-18 dated 13.10.2017, answerable to the Principal Commissioner of Customs, Mundra SEZ Port, Mundra, as to why-

- (i) The classification of the imported goods i.e “polyester woven fabrics” imported by mis-declaring the same as “Polyester Bed Cover” under CTH 63041930 should not be rejected and the same should not be re-classified correctly under CTH 5407 54 90 of the Customs Tariff Act, 1975;



- (ii) The goods viz. 20010 pcs of "polyester woven fabrics" admeasuring 202601.25 Sq. Meter, imported vide bill of entry as per Annexure "A", valued at Rs. 29,02,979/- (as detailed in Annexure A) by mis-declaring the same as "Polyester Bed Cover, which were seized vide Seizure Memo dated 20.04.2017, should not be confiscated under the provisions of Section 111 (m) of the Customs Act, 1962;
- (iii) The total Customs duty amounting to Rs. 53,87,923/-(Rupees Fifty Three Lacs Eighty Seven Thousand Nine hundred and Twenty Three only)(as detailed in Annexure A) leviable on the seized imported goods, should not be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962. As the importer has already paid an amount of Rs. 8,54,666/- the same should not be appropriated towards duty demanded.
- (iv) Interest should not be charged and recovered from them under Section 28AA of the Customs Act, 1962 on the duty demanded at (iii) above;
- (v) Penalty should not be imposed upon M/s Diamond Creations (proprietor Shri Tushar Narang), under the provisions of Section 114A / 112(a) of the Customs Act, 1962;
- (vi) the provisionally assessed Bill of Entry should not be assessed finally in terms of the above.

15.1 Also Show cause Notice was issued to

- (i) Shri Pradeep Narang, authorized representative of M/s Diamond Creations (proprietor Shri Tushar Narang) Sonipat as to why penalty should not be imposed upon him under the provisions of Section 114A / 112(a) and Section 114AA of the Customs Act, 1962;
- (ii) Shri Bajrang Sharma, ED M/s Bright Shiptrans Pvt. Ltd. (CB), Gandhidham as to why penalty should not be imposed upon him under the provisions of Section 114A / 112(a) & 114AA of the Customs Act, 1962.
- (iii) Shri Amit Momaya as to why penalty should not be imposed upon him under the provisions of Section 114A / 112(a) & 114AA of the Customs Act, 1962;
- (iv) Shri Mahesh Bhanushali as to why penalty should not be imposed upon him under the provisions of Section 114A / 112(a) & 114AA of the Customs Act, 1962

**Defense reply & Personal hearing:**

16. The case was posted for personal hearing on 22.01.2018 but no one appeared. However, the noticees made the following submissions:

- i. M/s Diamond Creations vide their letter dated 16.01.2018 submitted reply and requested for acceptance of their submission in lieu of personal hearing and stated that they are unable to attend the personal hearing and requested to process the refund claim filed by them vide letter dated 24.07.2017 for duty amounting to Rs.8,56,422/- paid for provisionally assessed Bill of Entry No. 8523067 dated 13.02.2017. Also stated that no prosecution can be initiated against them in respect of their captioned case where the request for assessment of Bill of Entry was made primarily on 1<sup>st</sup> check basis; no Customs duty would have been paid by them unless department had finalized Bill of Entry No. 8523067 dated 13.02.2017.



- ii. Shri Bajrang Lal Sharma of M/s Bright Shiptrans P.Ltd.,(CB) vide his letter dated 22.01.2018 stated that the SCN is mainly based on the statements of various persons and hence requested for cross-examination of Shri Amit Momaya, Shri Mahesh Bhanushali- other two co-noticees.
- iii. Shri Anil Balani, Advocate on behalf of Shri Amit Momaya vide his letter dated 20.01.2018 stated that the statements of various person have been relied without corroborated evidences and also requested for cross-examination of the witnesses. He also stated that his client has not committed any act rendering the goods liable for confiscation and is not liable for any penalty; that his client has no direct or indirect interest in the goods and department is free to deal with the same as deem fit.

16.1 Personal hearing in the matter was again fixed on 05.02.2018 with denial of request of cross-examination made by Shri Bajrang Lal Sharma of M/s Bright Shiptrans P.Ltd. & Shri Amit Momaya on the ground that no reason have been given & no new facts have coming forward. No one appeared to avail the opportunity for personal hearing, however the noticees has again requested for cross examination and extension of time.

- i. Shri Bajrang Lal Sharma of M/s Bright Shiptrans P.Ltd.,(CB) vide his letter dated 05.02.2018 again requested for cross-examination of Shri Amit Momaya, Shri Mahesh Bhanushali other two co-noticees and officer of textile committee.
- ii. Shri Anil Balani, Advocate on behalf of Shri Amit Momaya vide his letter dated 02.02.2018 again requested for cross-examination of the witnesses and relied on the various judgement and requested for 15 days time to file reply.

16.2 Again for the sake of natural justice, the noticees were again given the opportunity on 07.02.2018 to appear for personal hearing, wherein Shri Bajrang Lal Sharma appeared and stated that the test report of textile committee was collected by his acquaintance in Mumbai in sealed cover and couriered to Customs, Mundra was not forged and issued by the Textile Committee and it has not been manipulated in any manner by his acquaintance or by him. The authenticity of the report has not been verified by Customs from issuing authority and if the signature on the report was forged, the same was not confirmed from forensic laboratory. As per his enquiry both the reports i.e one which was received by Customs by courier and the second one which Textile Committee sent on inquiry by Customs, were issued by Textile Committee only and somebody is playing mischief to frame him.

16.3. Shri Anil Balani, Advocate on behalf of Shri Amit Momaya vide his letter dated 07.02.2018 reiterated his request of cross examination and no body appeared on behalf of Shri Mahesh Bhanuishali.



**Discussion and Findings:**

17. I have gone through the facts of the case as narrated under the Show Cause Notice alongwith documents filed at the time of import, submission made in written reply as well as submission made during personal hearing. I have also gone through the test reports i.e one submitted by the Customs Broker and another obtained directly from the Textile Committee Mumbai and also test report of ATIRA, which were received in this case of mis-declaration/mis-classification of goods.

17.1. I find that the Noticees Shri Amit Momaya through his advocate and Shri Banjarag Sharma have requested for cross examination of other co-noticees, officer of textile committee in all their replies stating that the same would be required before submission of their reply in the matter, which was denied to them. Further, for the sake of natural justice ample opportunity were given to the noticees whom they have not availed.

17.2 On the other side the importer who is the main noticee in the case i.e. M/s Diamond Creations vide their letter dated 16.01.18 requested to take their all previous submissions made (vide his 11 letters since importation of the goods) on record in lieu of their personal appearance. Further, M/s Diamond Creations urged to expedite their case and has left no stone unturned by approaching all the bureaucratic and political machinery of the country. The other co-noticees wanting cross examinations/ extensions in time appear to be only an attempt to delay the proceedings which has been denied for the reasons discussed later in this order. As I have accorded reasonable opportunities to all the noticees to strike a balance between the divergent demands/requests of the noticees I have no reason to prolong the adjudication proceedings. Accordingly, I take up the matter for adjudication.

17.3. At the outset, it is pertinent to mention that, the foremost issue before me for decision is whether the goods imported by the noticee by declaring the same as **“100% Polyester Bed Cover”** in the Bill of Entry filed and claimed classification under Customs Tariff heading 63041930 is indeed classifiable under CTH 63041930 or classifiable under CTH-54075490 of CTA, 1975 as **“Polyester Woven Fabrics”** as revealed from the test reports.

18. I have gone through the test results report dated 21.03.2017 of the Textile Committee, Mumbai submitted by Custom Broker wherein it is mentioned that “Sample is classified as “madeups” but can be appropriately classified as “Polyester woven fabrics” and also mentioned that “Sample is classified as “Polyester woven printed quilt case” under HS Code 6302.22” whereas the certified copy of test report obtained by the officer of Special Investigation and Intelligence Branch (SIIB), Custom, Mundra shows the test result as “**Sample cannot be classified as “madeups” but can be appropriately classified as “Polyester woven fabric” and Could not ascertain whether the weft is filament yarn or staple spun yarn. Hence, appropriate H.S. code is not provided**”. On comparing the contents of both the above mentioned reports I find following differences:



	<b>Fake report submitted by Customs Broker</b>	<b>Original Report</b>
Whether Sample fall under the category of "madeups" as defined under the HSN	Sample is classified as "madeups" but can be appropriately classified as "Polyester woven fabrics"	Sample cannot be classified as "madeups" but can be appropriately classified as "Polyester woven fabric"
Correct description & classification of the sample	Sample is classified as "Polyester woven printed quilt case" under HS Code 6302.22	Could not ascertain whether the weft is filament yarn or staple spun yarn. Hence, appropriate H.S. code is not provided.

Further, from the copy of test report certified by the textile Committee Mumbai wherein they have ascertained that the goods contains 100% polyester texurised yarn and cannot be classified as madeups but appropriately classify as "Polyester woven fabrics", it is clearly evident that the imported goods were not madeup and therefore the report submitted by the Custom Broker is fake/manipulated and submitted with intent to justify the mis-declaration of the goods as 100% Polyester Bed Cover and also to evade payment of appropriate duty leviable.

18.1. I have also gone through the test report no CTD/25-1 dated 20.04.2017 of ATIRA, Ahmedabad **wherein it is reported that the samples are 100% polyester woven and printed fabrics contains all texturized filament yarns in both warp and weft.** From the test report of Textiles committee, Mumbai and ATIRA, Ahmedabad, I find that the goods imported by importer vide bill of entry No. 8523067 dated 13.02.2017 is polyester woven fabric are made up of 100% polyester, the fabric is woven and printed, it contains all texturized filament yarns in both warp and weft and the filaments of weft are getting broken due to peaching process done on fabric. In the instant case, the goods are made of more than 85% or more by weight of texturized polyester filaments yarn and printed fabrics, accordingly I find that the goods imported by the importer are appropriately classifiable under CTH 54075490 under the head "printed-other fabrics" attracting duty @10% advlorem or Rs.20 per Sq.Meter whichever is higher.

19. Further, I find that one of the Noticee Shri Bajrang Sharma has contended that report collected by his acquaintance is not forged and the same has not been confirmed from the forensic laboratory. The content of both the reports of the Textile Committee, Mumbai appeared contradictory to each other and to ascertain the genuineness of them, the said test reports, along with the specimen signature of Mrs. Shailaja Soorej (Quality Assurance Officer, Laboratory of Textile Committee, Mumbai) were forwarded to Directorate of Forensic Science, Hyderabad who vide their report dated 08.01.2018 submitted that the signature, seal of Quality Assurance Officer and printed matter do not match. The scanned image of the result of examination/ opinion from the forensic lab is as under:



SCANED IMAGE OF RESULT OF EXAMINATION/OPINION GIVEN BY FORENSIC LAB:

File No. CFSL(H)/1401/DOC/711/CH-201/2017

**12. RESULTS OF EXAMINATION/OPINION****A. OPINION**

The documents of this case have been carefully and thoroughly examined with the necessary scientific aids.

1. The person who wrote the blue enclosed signatures stamped and marked S1 to S48 and A2 did not write the red enclosed signature similarly stamped marked Q1.

2. The seal impression stamped and marked Q2 do not tally with the seal impressions similarly stamped and marked S49 to S96 and A3.

3. The printed matter stamped and marked X1 do not tally with the printed matter similarly stamped and marked A1.


**Examiner**

S. S. LATHA

Scientist 'B' (Document)  
Central Forensic Science Laboratory  
Directorate of Forensic Science Services  
Ministry of Home Affairs, Government of India  
Amanthapur, Hyderabad - 500 013.

**B. Reasons:****Reference Para 1 of opinion:**

My opinion is based on differences between the questioned and standard signatures in general writing habits as well as in individual writing habits on comparison.

The general writing habits such as skill, speed, relative size and proportion of characters, movement and line quality are found different between the signatures on comparison.

Differences are observed in individual habits when the signatures are compared on the basic principle of 'like-with-like comparison', such as: ticked commencement of the extended initial stroke of 'S'; formation and shape of the shoulder part of 'h' and its joining with the succeeding character 'a'; formation of 'a' and its rotundity; combination of 'a' joining with 'i'; formation and finish of 'i' and location of the 'i-dot'; formation of 'l' with curvature at the base and manner of joining of 'l' with succeeding character 'a'; combination of 'a' joining with 'j' and straight finish of 'j'; formation of curved stroke of the simplified terminal character; manner of execution of underscore towards right-side - as observed in the standard signatures are not so found similarly in the questioned signature.

**Reference Para 2 & 3 of opinion: Self explanatory**

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Thus in light of the above, I find that the report submitted by the Customs Broker is fake/manipulated.

20. Further, I have gone through the chapter Note 7 of Section XI "Textile and Textile Articles". The expression "made up" means the cloth/fabric has to be hemmed or with rolled edges, with a knotted fringe at any of the edges, but excluding fabrics, cut to size and having undergone a process of drawn thread work and assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical materials joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded) produced in finished stage, ready for use etc., and find that to qualify as made up the cloth/fabric



has to be hemmed and stitched firmly in order to assume the shape of a bed cover/quilt cover; that the fourth side which is open also has to be fitted with either buttons or zip in order to hold the bed/quilt and fabrics in running length (loosely & unevenly stitched) cannot be termed as bed covers / quilt covers i.e. Made-up.

20.1 In the instant case, I find that the goods that have been imported by the noticee declaring them as "Polyester Bed Cover" are not in hemmed, stitched or fitted with buttons/ zip and as such cannot be sold in the market as bed cover/quilt cover. I also find that the goods imported by importer are loosely, unevenly, asymmetrically stitched and also do not have any zip or button on the open side and thus fall only in the category of fabrics. The plain reading of chapter note 1 of chapter 63 clearly implies that if the goods imported do not fall under the category of "made-up", they cannot be classified under chapter 63 of the Customs Tariff.

21. Shri Pradeep Narang, Authorised person of M/s Diamond Creations, Sonipat in his statement dated 12.04.2017 agreed with the opinion of the Textile Committee, Mumbai that the said goods are appropriately classifiable as polyester woven fabrics.

22. From the above discussion, I find that the impugned goods imported by M/s Diamond Creations vide bill of entry No. 8523067 dated 13.02.2017 are appropriately categorized as "polyester woven fabric" and rightly classifiable under CTH 54075490 of the Customs Tariff Act, 1975 and not as "Polyester Bed Cover" under CTH 63041930 of the Customs Tariff Act, 1975 as claimed/declared by them and the Customs Broker submitted fake/manipulated test report with the help of other persons with intent to justify the mis-declaration of the goods and confirm that the goods imported are "100% polyester Bed Cover" and also to evade payment of appropriate duty leviable thereon.

23. Further, I find that M/s Diamond Creations in connivance with the overseas supplier had willfully mis-stated the same as "Polyester Bed Cover" and claimed classification as per mis stated description under CTH 63041930 as against the actual description of the goods i.e "polyester woven fabrics" falling under CTH 54075490 before the Customs authority at the time of import with a view to evade higher applicable customs duty. The correct description and classification of the imported product was also suppressed at the time of filing of bills of entry by presenting an invoice with a different description of the goods. Thus, Shri Pradeep Narang, Authorised person of M/s Diamond Creations had deliberately mis-declared the goods by willful mis-statement and suppression of the facts in contravention of various provisions of the Customs Act, 1962 and Rules made thereunder with intent to evade higher Customs duty leviable thereon. Thus, the applicable customs duty liability had not been discharged by the importer by way of willful mis-statement/ mis-declaration and suppression of facts and therefore, the customs duty is liable to be recovered by invoking the provisions of the extended period of limitation under Section 28(4) of the Customs Act, 1962.



24. In view of above, differential Customs Duty to the tune of Rs.45,33,257/- (Rs. 53,87,923/-- Rs.8,54,666/-) would be recoverable under Section 28(4) of the Customs Act,1962 on the goods imported under bill of entry No. 8523067 dated 13.02.2017 falling under Chapter 5407 54 90 under the head "printed — other fabrics" attracting duty 10% ad valorem or Rs. 20 per sq. Meter whichever is higher and deliberately mis-declared by willful mis-statement and suppression of the facts with malafide intention to evade payment of Customs Duty. However, since these goods were permitted to be re-exported conditionally by the Department on the request of the importer and accordingly re-exported under Shipping Bill No. 6409306 dated 30.05.2017 without being cleared for home consumption and thus re-exported without crossing the Customs frontier, question of demanding the customs duty on import of such goods does not arise. Had it been the case that the importer desired to get the goods cleared from the Customs frontier for use within the Indian territory, the goods would have been subject to levy of customs duties. However, since the goods have been re-exported, I find that the demand of duties of customs in the SCN is not sustainable.

25. Further in the present case, as already discussed hereinabove, the impugned goods have been intentionally mis-declared by giving wrong description as "Polyester Bed Cover" whereas the actual product was "polyester woven fabrics", thereby suppressing the correct description and classification of the imported goods, while filing the bill of entry and seeking clearance at the time of the importation of the impugned goods, the said imported goods are liable to confiscation, under Section 111(m) of the Customs Act, 1962. The importer's contention that they made request for assessment of bill of entry on 1<sup>st</sup> check basis is of no consequence and is of no help to their case, because of fabrication of test report at later stage to avoid payment of higher duty and face consequence of misdeclaration, as they only are real beneficiary of such fabrication and others would not indulge in such fabrication without their active consent.

26. I further find that the importer was well aware of the exact nature of the imported goods and inspite of that has mis-declared the imported goods and thus rendered themselves liable for penal action under Section 112(a) of the Customs Act, 1962.

26.1 Shri Pradeep Narang, Authorized person of M/s Diamond Creations, Sonipat was interacting with the overseas suppliers for import of these goods. Being in charge of the purchase and imports and their documentation, he is responsible for the said mis-declaration of imported goods viz. "polyester woven fabrics" as "Polyester Bed Cover", in order to evade higher Customs duty leviable on the imports of "polyester woven fabrics". As accepted by him in the statement that the product imported by them does not fall under "madeups" and still the same was imported by him by declaring it as 'Polyester Bed Cover'. He also accepted that the same is 'polyester woven fabrics' and correctly classifiable under chapter 5407, instead of chapter 63 of the CTH. Further, fabrication of test report to suit their requirement can not be without active consent of Shri Pradeep Narang. Thus, I find that Shri Pradeep Narang, Authorized person of M/s Diamond Creations, Sonipat was well aware of the exact nature/use of the imported goods and was also aware of the feature of imported goods and thereby knowingly and actively



concerned himself in the act of mis-declaration and mis-classification before the Customs and thereby attempted to evade Customs duty to the tune of Rs.45,33,257/-. Shri Pradeep Narang, Authorized person of M/s Diamond Creations, Sonipat, had knowingly and intentionally concerned himself in making and signing of fabricated documents which were presented to the Customs authorities which he knew were false and incorrect in respect of the description of the imported goods and thus liable to confiscation under Section 111(m) of the Customs Act, 1962 and hence he made himself liable for penalty under Section 112(a) as well as 114AA of the Customs Act, 1962.

27. Before coming to the issue whether penalty is imposable on S/Shri Mahesh Bhanushali. Amit Momaya and Bajrang Sharma, I am examining whether the request of cross examinations of the co-noticees by S/Shri Amit Momaya and Bajrang Sharma, the Customs broker should be granted or not in the facts and circumstances of present case. I find that Shri Amit Momaya has stated in his statement that they had been engaged for such tempered/ forged test result by Shri Bajrng Lal Sharma which was also accepted by Shri Bajrng Lal Sharma before the customs as seen from their statements. Therefore, no useful purpose would be served by allowing cross examination of each other. There are plethoras of judgments stating that requirement for cross examination in quasi-judicial proceedings has to be examined in the facts of the case and it is not mandatory to allow all such requests. In this regard, I refer to CESTAT order in case of Shally Thapar Vs. Commissioner of Customs reported in 1993(64) ELT 31(Tribunal) wherein, the Hon'ble tribunal by citing the Supreme Court order in AIR 1997, SC 1627 has held that there is no hard and fast rule in quasi-judicial process is allowing cross examination and it is to be determined depending on the circumstances of the case and upheld denial of cross-examination of co-accused. In case of Commissioner of Customs, Chennai Vs. D. Bhoorniul, reported in 1983 (13) ELT 1546 (SC), the Hon'ble Supreme Court has held that the provisions of the Evidence Act as well as Code of Criminal Procedure, in terms, are not applicable to the adjudication proceedings. Further, Hon'ble Madras High Court, in the case of K. Balan Vs. Govt. of India, reported in 1982 ELT (386) Madras, had held that right to cross examination is not necessarily a part of reasonable opportunity and depends upon the facts and circumstances of each case. It largely depends upon the adjudicating authority, who is not guided by the rules of evidence as such but who must offer such opportunity to the party concerned as would assure him proper opportunity to defend himself It would, however, be in the interest of justice and fairness to the parties, that the opportunity to cross-examination is given wherever it is relevant, justified and genuine and where it is not for protracting the proceeding, as held by the Hon'ble Tribunal in M.P.Jain Vs. CCE 1988 (37) ELT 577 (Trib). Similarly, in the case of Shivom Ply-N-Wood Pvt. Ltd vs. Commissioner of Customs & Central Excise, Aurangabad, reported at 2004 (177) ELT 1150 (Tri. Mumbai), Hon'ble Tribunal. in their order, in para 6, has held as under:

*"6.....Their contentions that principles of natural justice are violated inasmuch as cross-examination of persons, whose statements are relied upon, has to be weighed in the light of the facts that all the statements relied upon were placed before them. They had all the opportunity to demolish these statements during the proceedings.*



*Cross-examination cannot be claimed as a matter of right in departmental proceedings. ....”*

27.1 Further, the Hon'ble Tribunal in the case of M/s. Sridhar Paints Co. Pvt. Ltd., v/s Commissioner, Customs & Central Excise, Hyderabad-III, reported in 2006 (198) ELT 514 (Tri.Bang.), has held that “the denial of cross examination of witness is immaterial in case of confessional statements. In the said case, it was charged by the party that the adjudicating authority had denied the right of the appellant to cross-examine the witnesses and the investigating officers. In the said case the Tribunal, in light of following various case laws, cited by the Adjudicating Authority, has held that there was no violation of principal of natural justice by denying of cross-examination of witnesses/officers.”

27.2 The Hon'ble Tribunal while passing the aforesaid order, has relied upon the decisions in case of (i) Suman Silk Mills Pvt. Ltd. v. CCE, Baroda reported in 2002 (142) ELT 640 (Tri.-Mumbai) – No infraction of principles of natural justice where witnesses not cross-examined when statements admitting evasion were confessional. (ii) Anil Das v/s CC, New Delhi reported in 2002 (141) ELT 135 (Tri.-Del.) – Non-allowance of cross-examination of appellants when confessional statement made by themselves does not amount to violation of rule of natural justice and (iii) Beauty Dyers v. CCE, Chennai reported in 2001 (136) ELT 339 (Tri.-Chennai) – Non-availability of witnesses for cross-examination not a fatal flaw when the findings are based on document about which there is no credible explanation and nothing on record to show statements not voluntary or effectively retracted within close proximity of the time these were detained.

27.3 It is found in the subject case that all the statements were recorded under Section 108 of the Customs Act, 1962. As there is no dispute on bona fides of these statements, only on account of these statements being relied upon, I find no justification of cross examination of the people, whose statements are being relied upon. At no stage during investigation, any doubt was raised by any person connected with the said noticee on the facts stated by others in their statement. Therefore, merely because statements of these persons are being relied upon, these statements do not loose their validity. There was no other reason cited by the noticees for calling the persons for cross examination, therefore, Cross examination of these persons was rejected, and the reasons for rejection of their requests for cross examination have also been duly communicated to them.

27.4 The reasons stated above for denying cross examination of co-noticees also apply to the denial of cross-examination request of Shri Amit Momaya.

28. As regards penalty under Section 114AA of the Customs Act, 1962 on Shri Mahesh Bhanushali, Shri Amit Momaya and Shri Bajrang Lal Sharma, of M/s Bright Shiptrans P Ltd., I find that the Bill of Entry in respect of the goods in question has been filed by M/s Bright Shiptrans P Ltd. In this regard, I find that Shri Mahesh Bhanushali has categorically admitted in his statement dated 12.4.17 that he had been engaged by Shri Amit Momaya at the behest of Shri



Bajrang Lal Sharma to modify the Test Result forwarded to Custom House, Mundra by forging/manipulating the same to suit their desired results and to facilitate the importer for smooth/undisturbed /safe clearance of the said imported goods, which is prime-facia found to be mis-declared as per customs law framed thereof for some monetary consideration. He also admitted that he has collected some consideration for the same act. These facts were corroborated by Shri Amit Momaya, under his statement dated 20.4.2017, wherein he has admitted that he had engaged Shri Mahesh Bhanushali to obtain positive test reports and for that paid some remuneration. Shri Bajrang Lal Sharma has also corroborated the above facts under his statements dated 17.4.2017 and 21.4.2017 wherein he has stated that he had requested Shri Amit Momaya to obtain favorable test report in the above case.

28.1 Subsequently, Shri Amit Momaya has retracted his statement on 22.4.2017. However, the statements of Shri Mahesh Bhanushali and Shri Bajrang Lal Sharma have not been retracted. It is worthwhile to mention that both, Shri Mahesh Bhanushali and Shri Bajrang Lal Sharma have mentioned Shri Amit Momaya who is the intermediary in this case. Shri Bajrang Lal Sharma desired a favorable report and he had entrusted the said job to Shri Amit Momaya. Shri Mahesh Bhanushali had been engaged by Shri Amit Momaya to obtain the favorable report. Thus, the theory of all the three corroborate with each other. Further, I find on the basis of evidence on record that the Test Result has indeed been forged and there are two different test results showing different results viz. one obtained by the customs directly from Textile Committee, Mumbai and the other (having the same date and reference number) submitted by the custom broker i.e M/s Bright Shiptrans P Ltd. Thus, it is established on record that a forged test result has been submitted to the customs department. The above three persons viz. Shri Mahesh Bhanushali, Shri Amit Momaya and Shri Bajrang Lal Sharma have played the pivotal role in placing such tempered/ forged test result before the customs as seen from their statements. When all the pieces of the jig-saw are falling in place, as discussed above, the retraction of statement by Shri Amit Momaya is nothing but an afterthought and cannot be given cognizance. This is especially so in light of the fact that Shri Mahesh Bhanushali and Shri Bajrang Lal Sharma, having narrated the same story about obtaining a favorable report, have not retracted their respective statements. Thus, the circumstantial evidence coupled with the oral evidence in the form of statements clearly establish that Shri Mahesh Bhanushali, Shri Amit Momaya and Shri Bajrang Lal Sharma had involved themselves with tempering the test results with an intent to mis-classify the import product(goods) and thereby evade payment of appropriate customs duty. Thus, I find that all the three have rendered themselves liable to penalty in terms of the provisions of Section 112(a) as well as 114AA of the Customs Act,1962.

29. In view of the forgoing discussions and findings, I pass the following order:-

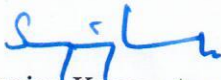
#### **ORDER**

- (i) The goods imported under the Bill of Entry No. 8523067 dated 13.02.2017, is considered and held as "polyester woven fabrics" and is correctly classifiable under CTH 54075490 of the Schedule to the Customs Tariff Act, 1975. Accordingly the



declared classification of the imported goods as "Polyester Bed Cover" under CTH 63041930 ibid, is hereby rejected. The bill of entry which was earlier assessed provisionally be assessed finally under Section 18 of Customs Act, 1962.

- (ii) I hold the goods viz. 20010 pcs of "polyester woven fabrics" admeasuring 202601.25 Sq. Meter, imported vide bill of entry No. 8523067 dated 13.02.2017, valued at Rs. 29,02,979/- seized vide seizure memo dated 20.04.2017 which were imported by mis declaring/mis classifying the same as "Polyester Bed Cover" liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962." However, since the goods were allowed to be re-exported under bond pending adjudication, I impose redemption fine of Rs.8,54,666/- (Rs. Eight Lakhs Fifty Four Thousand Six Hundred Sixty Six Only) in lieu of Confiscation under Section 125 of the Customs Act, 1962.
- (iii) I impose a penalty of Rs. 20,00,000/- (Rs. Twenty Lakhs Only) on M/s Diamond Creations, Sonipat under Section 112(a) of Customs Act, 1962.
- (iv) I order appropriation of amount of Rs.8,54,666/- (Rs. Eight Lakhs Fifty Four Thousand Six Hundred Sixty Six Only) deposited by the importer as duty, against the redemption fine.
- (v) I impose a penalty of Rs. 5,00,000/- (Rs. Five Lakhs Only) each on Shri Pradeep Narang, Authorized person of M/s Diamond Creations, Sonipat under Section 112(a) and Section 114AA of Customs Act, 1962, respectively.
- (vi) I impose a penalty of Rs. 5,00,000/- (Rs. Five Lakhs Only) each on Shri Mahesh Bhanushali under Section 112(a) and Section 114AA of Customs Act, 1962, respectively.
- (vii) I impose a penalty of Rs. 5,00,000/- (Rs. Five Lakhs Only) each on Shri Amit Momaya under Section 112(a) and Section 114AA of Customs Act, 1962, respectively.
- (viii) I impose a penalty of Rs. 5,00,000/- (Rs. Five Lakhs Only) each on Shri Bajrang Lal Sharma, of M/s Bright Shiptrans P Ltd., under Section 112(a) and Section 114AA of Customs Act, 1962, respectively.

  
(Sanjay Kumar Agarwal)  
Commissioner of Customs,  
Custom House Mundra.

**BY SPEED POST/RPAD**

F.NO.VIII/48-17/Adj/Pr.Commr./MCH/2017-18

Dated: 12.02.2018

1. M/s Diamond Creations,  
112, 1<sup>st</sup> Floor, Eight Marla,  
Model Town, Sonipat – 131 001, Haryana
2. Shri Pradeep Narang,  
112, 1<sup>st</sup> Floor, Eight Marla, Model Town,  
Sonipat – 131 001, Haryana
3. Shri Mahesh Bhanushali,  
S/o Shri Vasant Lal Bhanushali,  
residing at 11, 4<sup>th</sup> Floor, Devashish Bldg., Himalaya Society,  
Ghatkopar (West), Mumbai-84



4. Shri Amit Momaya,  
425, New Vyapar Bhavan, P D''mello Road,  
Masjid Bunder (E), Mumbai – 01
5. Shri Bajrang Sharma,  
S/o Shri Prabhu Dayal Sharma,  
Plot No. 244, 1<sup>st</sup> Floor,  
Sector 1/A, Opp. Kutch Uday,  
Gandhidham

**Copy Submitted to:**

- (i) The Chief Commissioner of Customs, CCO, Ahmedabad,
- (ii) The Additional Director General, DRI, Ahmedabad Zonal Unit, Ahmedabad.
- (iii) The Deputy Commissioner, Import Assessment, Group-III, Customs House, Mundra
- (iv) The Deputy Commissioner (RRA), Customs House Mundra.
- (v) The Deputy/Assistant Commissioner (Recovery), Customs House Mundra.
- (vi) The Deputy/Assistant Commissioner (EDI), Customs House Mundra.
- (vii) The Deputy/Assistant Commissioner (SIIB), Customs House Mundra.
- (viii) Guard File